

STATE OF MICHIGAN



JAMES J. BLANCHARD, Governor

DEPARTMENT OF MANAGEMENT AND BUDGET

P.O. BOX 30026, LANSING, MICHIGAN 48909

SHELBY P. SOLOMON, Director

DRAFT

February 26, 1990

Valdas V. Adamkus, Regional Administrator
U. S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, IL 60604

Dear Mr. Adamkus:

Your letter of December 8, 1989, has been received and reviewed by this office. Many of the questions you asked required certain actions to occur in the State of Michigan before an appropriate answers could be provided. We are now in a position to respond to all of your questions and pursue final determination from you regarding the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund and its compliance with 40 CFR 280.1(c).

Your questions will be answered in the order they were posed in your letter.

1. Issue of Eligibility - An affidavit (copy attached) has been prepared which allows the owner/operator to be pre-certified to the fund prior to any type of release determination being made. This affidavit allows the owner/operator to certify that they meet the basic registration and record keeping requirements, as well as the financial assurance test that the State of Michigan has imposed. Once this affidavit is received by the fund administrator and verified for accuracy, a certificate is issued to the owner/operator indicating that they are certified eligible for MUSTFA. If a subsequent release should occur, the owner/operator is required to submit another affidavit to attest that they are in compliance at the time of release. For each claim filed against the fund, a subsequent affidavit is required to assure that, at each phase of the clean up process, the owner/operator is in compliance with the reporting requirements applicable to their situation. This pre-certification to the fund also is required for individuals to access the interest subsidy portion of our program.

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2. Life Expectancy of Legislation - The initial legislation was effective July 18, 1989. The legislation has been amended twice since that date for technical modifications which had little impact on the funds operation. The sunset provision of the bill was an attempt to recognize that, with 5 years of loss data, substantial upgrading of UST's in the state, and in excess of \$300 million in clean up work being accomplished, the insurance industry would be more apt to provide coverages which meet the EPA requirements at reasonable costs to the state's owner/operators. I am sure that if the insurance industry does not respond in the manner I described, the petroleum associations will appeal to the legislature to extend the legislation indefinitely. In reality, that request may happen regardless of the response of the insurance industry. If revenues are not sufficient, as you indicated in your letter, the fund could be terminated by notifying the legislature of the shortage of funding. If the legislature failed to take any action to remedy the situation, like increase the fee, EPA and all registered owners/operators would be notified that the fund no longer met EPA requirements. I seriously doubt that our legislature, having gone to the trouble to create this legislation, is going to ignore the outcry of the petroleum owners/operators should that shortfall occur.

3. The \$10,000 deductible amount requires that the owner/operator provide proof of financial assurance to the state for the \$10,000 amount. We are using the same proof mechanisms as EPA, with the addition of paid invoices, where applicable. This proof requirement, along with the MUSTFA Fund, will assure owner/operator compliance with the EPA financial responsibility requirements. While the State is not guaranteeing the fund, the legislature has committed to funding the program with the primary intent to provide financial assurance for owners and operators in Michigan, consistent with EPA's requirements. As indicated earlier, I seriously doubt that our legislature, having gone to the trouble to create this legislation, is going to ignore the outcry of the petroleum owners/operators should the fund become insolvent. Even if such a thing did happen, the fund would be no different that a fully insured program whose carrier became insolvent after providing the coverages required by EPA. All of the owners/operators, including EPA, would be notified and the owners/operators would be required to come up with some other financial proof mechanism. The advantage to our fund is that the legislature can create the means by which the fund can be made solvent again. Unfortunately, most insurance carriers providing this coverage in Michigan are not so fortunate. The Emergency Response Fund, referred to in your letter, is provided as additional funding for the L.U.S.T. Trust Funds administered by our DNR. This portion of the fund does not relate to the proof of financial assurance requirements of EPA.

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4. a. The Policy Board has been appointed by the Governor (see attached GONGWER Newsletter). It is anticipated that the first meeting will be in March, hopefully in connection with a visit to Michigan by you or your staff.
- b. The Attorney General will apply prudent and reasonable criteria in assessing the reasonableness of settlements. It is anticipated that a Third Party Administrator will also be available to review the merits of any claim and provide additional assistance to the Attorney General in this determination. Possible use of other sources such as Jury Verdict Research and court settlement records will be explored.

I look forward to discussing these and other issues with you or your staff at your earliest convenience. In addition, I anticipate securing a final determination on MUSTFA's ability to meet your financial assurance requirements.

Sincerely,



Kenneth R. Swisher, Director
Risk Management Division
Office of Management and Information Systems

STATE OF MICHIGAN

AIRBORNE EXP 750416284



JAMES J. BLANCHARD, Governor

DEPARTMENT OF MANAGEMENT AND BUDGET

P.O. BOX 30026, LANSING, MICHIGAN 48909
SHELBY P. SOLOMON, DirectorO. ORC
CC: RF (LETTER ONLY
WESTLAKE " "
WMD " "

August 31, 1989

RECEIVED

Mr. Valdas V. Adamkus
Regional Administrator
E.P.A. Region V
230 South Dearborn Street
Chicago, IL 60604

SEP 05 1989

U. S. EPA REGION 5
OFFICE OF REGIONAL ADMINISTRATOR

Dear Mr. Adamkus:

Attached are copies of the Michigan Public Acts which establish the Michigan Underground Storage Tank Financial Assurance Fund(MUSTFA), the relevant Corrective Action Legislation(PA 478 of 1988, as amended), and the Registration Requirement Legislation(PA 423 of 1984, as amended). PA 518 of 1988, as amended, is the act which creates the Financial Assurance Fund(MUSTFA). It is anticipated that this Act will generate in excess of \$50.0 million each year of its existence.

Also attached is a draft of the proposed MUSTFA Emergency Rules and forms which have been prepared for implementation. The Fund's Policy Board nominees have been submitted to the Governor's Office and it is anticipated we should have Board appointments relatively soon.

A meeting has been scheduled at your affices in Chicago for September 8, 1989, at 10:00 am. Attending from the State of Michigan will be:

Ken Swisher, MUSTFA Fund Administrator,DMB
Art Nash, State Fire Marshall Office, State Police
Tom Rorher, State L.U.S.T. Director, DNR
Joe Felick, MUSTFA Interest Subsidy Coordinator, Treasury
Howard Pizzo, Chief Accountant, Management and Budget(DMB)
Stuart Freeman, Attorney General's Office
Robert Reichel, Attorney General's Office
Stanley Pruss, Attorney General's Office

It is our intent that the issues surrounding MUSTFA can be discussed and that you and your staff are able to determine that the financial responsibility requirements established by E.P.A. can be met by this Act.

If there are further questions which need answering prior to our meeting, please let me know. My office telephone number is 517-373-0438.

Sincerely,

Kenneth R. Swisher, Director
Risk Management Division
Office of Management and Information Systems